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Biden seeks federal court order to stop Army Corps of Engineers from dredging

Wilmington, DE – Today, Attorney General Joseph R. Biden, III filed a complaint for injunctive and declaratory relief to order the U.S. Army Corps of Engineers (“Corps”) to comply with Delaware law prior to dredging in Delaware waters. The Attorney General’s lawsuit requests that the United States District Court for the District of Delaware declare that the Corps’ decision to deepen Delaware waters violates state and federal law and issue a preliminary injunction to halt the Corps’ dredging activities until the Corps obtains the required Delaware permits.

“The decision by the Army Corps of Engineers to begin deepening Delaware waters is a direct challenge to the territorial authority of the State of Delaware and violates federal and state law,” Attorney General Biden stated. “We will aggressively enforce our right to regulate and control any activity conducted on the Delaware River within Delaware’s boundaries. Instead of working with Delaware by addressing longstanding critical concerns about the impact of the proposed dredging project, the Corps decided to proceed to deepen Delaware waters without Delaware’s approval. This decision is unacceptable. We are taking action to ensure that the Corps applies for and obtains the necessary Delaware permits before it dredges.”

Delaware’s Subaqueous Lands and Wetlands Acts require a federal agency to secure state approval before conducting the type of dredging proposed by the Corps. The law makes clear that before issuing permits, the State must weigh the environmental harms posed by potential water pollution. Moreover, the Corps is required by the federal Clean Water Act to comply with State water pollution requirements and to obtain necessary state permits before it can begin any dredging project that could result in polluted discharge or runoff.

On October 23, 2009, the Army Corps of Engineers notified Delaware that it intends to proceed with a plan to dredge the shipping channel of the Delaware River despite failing to first obtain required Delaware environmental permits. The proposed project would deepen the channel by at least five feet from the mouth of the Delaware Bay to the ports of Philadelphia and Camden. Much of this project lies partially or wholly within Delaware territory.

“The Delaware Department of Justice is working closely with Governor Markell and the Delaware Department of Natural Resources and Environmental Control as we enforce Delaware’s laws. Moreover, we are working closely with the New Jersey Attorney General’s office to enforce our mutual interests in this matter.”

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